

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-219961 DATE: December 27, 1985
MATTER OF: Arcwel Corporation

DIGEST:

An unlevel low bid, submitted despite a solicitation requirement for level pricing, is responsive unless it can be shown that the second-low bidder conceivably could become low if it were permitted to unlevel its bid in the same manner as the low bidder.

Arcwel Corporation protests the award of a multiyear contract for boat cradles to Gallo Machine, Inc. under invitation for bids (IFB) No. DAAJ10-85-B-A263, issued by the United States Army Troop Support Command, St. Louis, Missouri. Arcwel, the second-low bidder, contends that Gallo's apparent low bid was nonresponsive due to a failure to follow solicitation requirements regarding level pricing.

Because we find that Arcwel was not prejudiced by Gallo's unlevel bid, we deny the protest.

The Army issued the IFB on May 6, 1985, seeking a total of 816 boat cradles. The solicitation was structured so that the first program year requirement was for a base quantity of 93 production units (items 0001AA, 0001AB, 0001AC) and 3 first articles, i.e., pre-production units (item 0001AD). The base quantity for the second, third, and fourth program years was 96, 154, and 82, respectively.

The solicitation required bidders to submit the same unit price for the base quantity (including the pre-production units in the first year) for all 4 years. Unit prices for option quantities were to be equal to or less than those for the base quantity. That is, the

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solicitation required level pricing.^{1/} Additionally, the solicitation provided that bids would be evaluated by adding extended prices for base and option quantities to prices for transportation of the cradles from the contractor to the Army and transportation of government-furnished equipment to and from the contractor's plant.

The Army opened bids on June 21, 1985. Gallo's low bid, originally level-priced, had been modified by a TWX so that it was no longer level. Rather, it was as follows:

	Item No.	Quantity	Unit Price	Total
First Program Year				
base requirement	0001AA	70	\$5,875	\$411,250
base requirement	0001AB	5	5,875	29,375
base requirement	0001AC	18	5,875	105,750
pre-production	0001AD	3	13,000	39,000
report	A0001	1	2,000	2,000
Second Program Year				
base requirement	0003	154	5,975	920,150
option	0004	112	5,995	671,440
Third Program Year				
base requirement	0005	152	6,035	917,320
option	0006	114	6,055	690,270
Fourth Program Year				
base requirement	0007	82	6,095	499,790
option	0008	106	6,135	650,310
Transportation				<u>229,215</u>
Total				\$5,165,870

From the above, it can be seen that Gallo failed to level price item 0001AD (the pre-production units) and items 0003, 0005, and 0007 (the base requirement for the second through fourth years). If Gallo had priced its bid

^{1/} The Federal Acquisition Regulation (FAR) generally provides for the amortization of costs in multiyear contracts, resulting in identical or level unit prices. FAR, 48 C.F.R. § 17.102-3 (1984).

in accord with the solicitation, it would have bid the same price for item 0001AD as for items 0001AA, 0001AB, and 0001AC, since each is a part of the definitive program quantity for the first program year. Also, Gallo would have bid the same price for items 0003, 0005, and 0007, because each of these items represents a definitive program quantity for later program years. Additionally, Gallo failed to price the option year items, 0004, 0006, and 0008, at amounts equal to or less than the base unit prices, as required by the solicitation.

Arcwel, on the other hand, level priced its bid, offering the same unit price, \$6,140, for each line item except the report, which it priced at \$800. Its transportation costs were evaluated at \$342,159. The total of these items, plus Arcwel's extended prices for the base and option quantities over the 4 program years was \$5,353,199. The Army, however, concluded that Gallo's failure to level price its bid did not make the bid nonresponsive, and it awarded Gallo the contract for the first program year on July 31, 1985.

Arcwel alleges that it was prejudiced by the Army's acceptance of Gallo's bid. Arcwel believes that had it been permitted to bid in the same manner as Gallo, that is, by submitting an unlevel bid, it might have been able to displace Gallo as the low bidder.

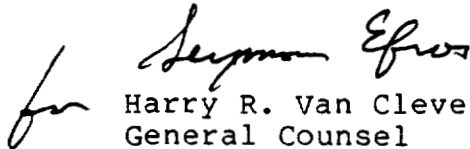
The purpose of a level pricing provision is to prevent bidders from lowering their prices in evaluated portions of a bid and inflating their prices in unevaluated portions--to the government's detriment. In cases dealing with a bidder's failure to level price its bid, the determinative issue is not whether the bidder violated the level pricing provision, but whether this deviation worked to the prejudice of other bidders. Keco Industries, Inc., 64 Comp. Gen. 48 (1984), 84-2 CPD ¶ 491.² Other bidders are only harmed by unleveling if they could have become low by bidding in the same manner, that is by also unleveling their prices. Id.

²/ In Keco, option prices were evaluated for purposes of award as here. We suggested that the failure to level price pre-production units in the first year could cause prejudice to other bidders analogous to those cases where a true level option pricing provision was violated.

We do not believe this was the case here, since it does not appear that Arcwel would have been low bidder even if it had the opportunity to unlevel its prices. The highest of Gallo's unlevel unit prices, \$6,135 (for the option quantity in the fourth program year), is still less than Arcwel's level unit price, \$6,140. Moreover, of the \$187,329 difference between the two bids, \$112,944 represents the difference between Arcwel's and Gallo's evaluated transportation costs, \$342,159 and \$229,215, respectively. This more than offsets Gallo's failure to level price the three pre-production units for which, as noted above, it bid a unit price of \$13,000. Arcwel does not dispute the fact that these differences exist, and in our view, it is inconceivable that Arcwel could have overcome them, even if it had been allowed to unlevel its prices.

We conclude that even considering the effect of Gallo's unlevel pricing, Arcwel would not have been low bidder. Therefore, we find that the Army acted properly in accepting Gallo's unlevel bid.

The protest is denied.


for Harry R. Van Cleve
General Counsel